IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4158 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NUTAN BHARTI TRUST - Petitioner(s)
Versus
GOVERNMENT OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR JD AJMERA for Petitioner(s) : 1,
MR UMANG OZA, AGP for Respondent(s) : 1 - 2.
MR AM RAVAL for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 05/07/2007

ORAL JUDGMENT

1. The petitioner-Trust has preferred this petition under Article 226 of the Constitution of India challenging the order of respondent no.2 i.e Joint

Director-Education, State of Gujarat dated 09.04.96 containing direction to the petitioner to reinstate the respondent no.3 on his original post with backwages within fifteen days.

2. This Court(Coram: R.M Doshit, J.) issued Rule and granted ad-interim relief to the petitioner in terms of para 22B vide order dated 23.07.96. The interim relief was to the effect that the impugned order of respondent no.2 was stayed till the pendency of this petition. The said relief has continually been in operation till date.

3. Mr. J.D Ajmera, learned advocate appearing for the petitioner has contended that the order impugned in this petition is passed without jurisdication and that the tenor of the order goes to show that the principles of natural justice have not been observed by the respondent no.2 while passing this order. Mr Ajmera has contended that the respondent no.3 was dismissed from service after holding detailed inquiry and after affording him opportunity of being heard and leading evidence. This Court's order was assailed by the respondent no.3 before the appellate authority and the appellate authority had infact rejected the appeal on the ground that at the relevant time the appellate authority did not have jurisdiction to entertain the appeal against such order. The respondent no.3 thereafter approached this Court by preferring Special Civil Application No. 13493 of 1994 wherein the Court was pleased to

relegate the parties to the appellate authority vide order dated 25.09.95.

3.1 Mr Ajmera has submitted that this Court was infact pleased to keep all the contentions of parties open including that of jurisdiction of the appellate authority in deciding the appeal. Mr Ajmera has also submitted that the appellate authority though was specifically called upon to address itself on the issue, it has not dealt with the same at all in the entire impugned order. He has submitted that the order impugned in this petition is, therefore, without jurisdiction, suffers from patent irregularity of non application of mind and as it is passed in breach f principles of natural justice the same deserves to be quashed and set aside.

4. Ms Shanu Pathan, learned advocate appearing for Mr Rawal for the respondent no.3 has submitted that under the order of this Court dated 25.09.95 (Coram: M.S Parikh, J. as he then was), the appellate authority derived its jurisdiction of hearing the appeal and when the appellate authority has taken into consideration all the relevant materials in detail, the order need not be interfered with in the writ proceedings before this Court.

4.1 Ms Pathan has submitted that the charge of assault was subject matter of infact a criminal proceeding also wherein the respondent no.3 has been acquitted by the competent criminal court vide

judgement and order dated 15.04.94. This factor has been taken into consideration by the appellate authority and therefore it can be said that the appellate authority has considered all the aspects and come to the conclusion that the order of dismissal of respondent no.3 was wrongfully passed by the petitioner and therefore he was rightly ordered to be reinstated in service with all the consequential benefits.

4.2 Ms Pathan has also submitted that when this Court relegated the parties to the appellate authority, the Government Resolution dated 12.12.94 providing for appeal against such order was in existence and therefore it can well be said that the appellate authority did have jurisdiction to entertain the appeal and when the appeal is decided considering all the aspects, the order of the appellate authority impugned in this petition deserves to be sustained by this Court under Article 226 of the Constitution of India.

5. Mr Umang Oza, learned Assistant Government Pleader appearing on behalf of the State has submitted that the appellate authority i.e respondent no.2 derived its power to entertain the appeal against the order of such dismissal as it is passed by the petitioner only from and under the Resolution dated 12.12.94. The appeal of the respondent no.3 dated 31.01.94 has therefore not been entertained by the appellate authority as it is clear from the order

dated 16.11.94. Mr Oza has submitted that this Court has infact relegated the parties to the appellate authority and therefore the appellate authority has passed the order impugned in this petition.

6. This Court has heard the learned counsel appearing for the parties at length and perused the papers placed on record. Before regarding the rival contentions put before by the learned counsel for the parties, it is expedient to set out the facts in brief which are as under:

6.1 The petitioner-Trust had to issue charge-sheet against respondent no.3 who was at the relevant time working with the Trust as Livestock man. The charge-sheet was issued on 25.05.93 containing various charges including that of misappropriation and making assault upon a co-worker as well as harassing a lady colleague. An inquiry officer was appointed on 31.07.93 who conducted the inquiry in detail and came to the conclusion that charges from 1-9 in the charge-sheet were not proved and rest of the charges were held to be proved against respondent no.3. A show-cause notice dated 22.11.93 came to be issued calling upon the respondent no.3 as to why appropriate punishment may not be inflicted upon him. The respondent no.3 filed his reply dated 04.12.93. Thereafter the concerned authorities of the petitioner-Trust vide order dated 12.01.94 dismissed the respondent no.3 from service as the charges were held to be proved and his reply was not found

satisfactory.

6.2 The respondent no.3 thereafter preferred appeal against such dismissal order before the respondent no.2 authority. The appellate authority passed an order dated 16.11.94 turning down the appeal on the ground that the appellate authority to whom the appeal was addressed did not have jurisdiction for entertaining the same. The delinquent-respondent no.3 preferred Special Civil Application No. 13493 of 1994 before this Court wherein after hearing the parties, this Court (Coram: M.S Parikh, J. as he then was) was pleased to relegate the parties to the appellate authority vide order dated 25.09.95.

6.3 It deserves to be noted at this stage that the order of this Court dated 25.09.95 is clear in terms of jurisdictional aspect of the matter. Para 6 of the said order goes to show that the question of appellate authority's jurisdiction was also kept open to be decided by the appellate authority after hearing the contentions of both the sides. The appellate authority i.e respondent no.2 hereinabove quashed and set aside the dismissal order of the respondent no.3 passed by the petitioner and ordered the petitioner to reinstate the respondent no.3 with backwages within fifteen days. This order of the appellate authority dated 09.04.96 is impugned in this petition.

7. The fact remains to be noted that the appellate

authority was to address itself on the issue of its jurisdiction to hear the appeal. This Court in para 6 of its order dated 25.09.95 has made it eloquently clear upon the appellate authority that the appellate authority was to decide the question of jurisdiction after hearing the parties. Learned advocate for the petitioner has pointed out that the petitioner raised this contention before the appellate authority in his written argument which was submitted on 25.03.96 that the resolution did not contain any specific provision with regard to any appeal against the order on major penalties and that therefore the resolution dated 12.12.94 would be of no avail to the respondent no.3.

8. It also deserves to be noted that the appellate power came to be conferred upon the appellate authority under resolution dated 12.12.94 wherein it is provided that in case of major penalty, the delinquent will have to prefer appeal within thirty days from the date of the order to the Commissioner, Higher Education. Learned AGP has submitted that prior thereto no such power was vested upon the authority. This Court is unable to accept the contention of Ms Pathan that the jurisdiction to hear the appeal and decide the same was vested in the appellate authority under the order of this Court vide order dated 25.09.95 as it is stated hereinabove. The order of this Court dated 25.09.95 has infact kept the aspect of jurisdiction open and therefore the concerned appellate authority-respondent no.2 herein was duty bound to address

itself on this aspect. The order passed by respondent no.2 is conspicuously silent so far as the jurisdiction aspect is concerned.

9. This Court has also perused the relevant records of the proceedings produced in this matter. A specific contention is raised by the petitioner that the appellate authority has dropped charge no.12 i.e the alleged harassment by the delinquent to the lady colleague on the basis of some affidavit which is stated to have been filed by that lady colleague before the Notary Public affirmed after the impugned termination order dated 12.01.94. It was contended specifically by the petitioner before the appellate authority that the copy of the affidavit which is sought to be relied upon by the appellate authority for dropping charge no.12 had never been supplied by the petitioner-Trust nor were they given any opportunity to be heard on that affidavit.

9.1 Similarly, it was a contention specifically raised before the appellate authority that the hearing of the appeal was in itself not in consonance with the principles of natural justice inasmuch as the appellate authority was pointed out that the petitioner's side was asked to sit outside at the time of the authority hearing the delinquent i.e. the appellant before it. When these contentions were raised it was the bounden duty cast upon the appellate authority to address itself and record its findings thereon. The entire order of the appellate

authority is blissfully silent about these contentions and therefore this Court has no hesitation in accepting the contention of the learned advocate for the petitioner that he order of the appellate authority suffers from basic infirmity which deals a serious blow to the sustainability of the order assailed in this petition.

10. Accordingly, this petition is allowed. The order dated 09.04.96 impugned in this petition passed by respondent no.2 is not sustainable. The same deserves to be quashed and set aside and is accordingly hereby quashed and set aside. As a logical consequence of quashing of the impugned order the order of the petitioner-Trust terminating the services of the respondent no.3 is automatically restored. Rule is made absolute. No order as to costs.

(S.R.BRAHMBHATT, J.)

Divya//